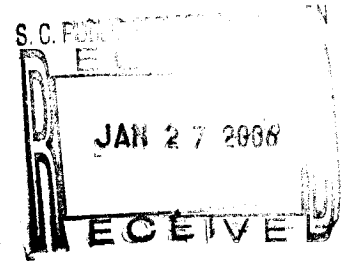


ELLIS:LAWHORNE

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January 25, 2006



VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

The Honorable Charles L.A. Terreni
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211


RE: Application of Total Environmental Solutions, Inc. for Rate Relief
Docket No. 2004-90-W/S, ELS File No. 557-10022

Dear Charlie:

Pursuant to the agreement of the parties, I am submitting along with this letter the Transcript of Record from Oral Arguments before the Circuit Court that occurred on October 24, 2005. Please feel free to contact me if you have any questions about this or any other matter.

With kind regards, I am

Yours truly,


John F. Beach

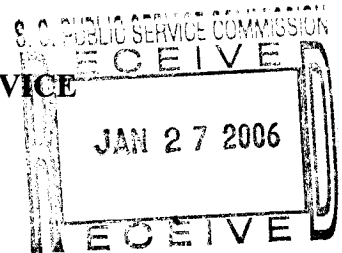
cc: Mr. Paul Maeder
Mr. Gary Shambaugh
Mr. Bill Schoening
All parties of record

**STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2004-90-W/S**

IN THE MATTER OF:)

Total Environmental Solutions, Inc.)
Application for Increase in Rates and)
Charges for Water and Sewer Services)
_____)

CERTIFICATE OF SERVICE



This is to certify that I have caused to be served this day, one (1) copy of the **January 25, 2006 Letter to the Honorable L.A. Terreni and Transcript of Record from Oral Arguments before the Circuit Court** via electronic mail and by placing a copy of same in the care and custody of the United States Postal Service, with proper first-class postage affixed hereto and addressed as follows:

H. Asby Fulmer, III
Fulmer Law Firm, PA
PO Box 1330
Summerville SC 29484

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Robinson McFadden & Moore, PC
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Legal Department
PO Box 11263
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Carol Roof

Columbia, South Carolina
January 25, 2006

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

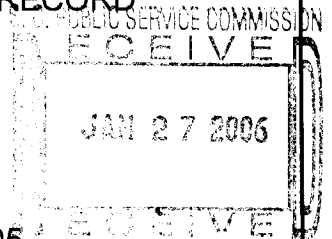
COURT OF COMMON PLEAS
2005-DR-40-0986

TOTAL ENVIRONMENTAL)
PLAINTIFF

vs.

TRANSCRIPT OF RECORD

FOXWOOD HILLS)
DEFENDANT



OCTOBER 24, 2005
COLUMBIA SOUTH CAROLINA

BEFORE:

JAMES R. BARBER, III, presiding Judge.

APPEARANCES:

JOHN BEACH, ESQUIRE
Attorney for the plaintiff

FRANK ELLERBEE, ESQUIRE
Attorney for the defendant

CRYSTAL T. JACKSON
Official Court Reporter

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CERTIFICATE OF REPORTER

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EXHIBITS

(There were no exhibits submitted.)

1 THE COURT: This is a motion on a reconsider on this
2 TESI case?

3 MR. BEACH: Yes, Your Honor.

4 THE COURT: What you got here Mr. Beach?

5 MR. BEACH: Judge, there's a very small portion of
6 the Order that the Court signed here. And I think I know
7 what you meant when you wrote this Order. And when you
8 signed the Order and I haven't had a chance to read
9 Mr. Ellerbee's memorandum here. He handed it to me about
10 30 seconds ago. But I don't know whether they--

11 THE COURT: -- We got a minute because we don't have
12 one. You have a copy?

13 MR. ELLERBEE: Okay. Two of them.

14 THE COURT: All right.

15 MR. BEACH: Okay. I think I know, I think after
16 reading that I think Mr. Ellerbee may disagree with what
17 I'm getting ready to say here. But--

18 THE COURT: -- You wouldn't be shocked by that, would
19 you?

20 MR. BEACH: Well, not shocked by it. I think it
21 would have been just, you know, surprising to have it
22 heard the other way. Your Honor, the question of whether,
23 well, let me back up. It seems that everyone in this
24 case, except for us was depending on the commission's
25 Ruling that said that the ultimate fair operating margin

1 that the company should have an opportunity to earn is
2 20 percent. That was a Ruling of the commission that the
3 property owner's association depended upon in making their
4 arguments before the Court and in that memorandum. It is,
5 I'd say a lynx pen of the Court's reason for rejecting
6 the Order that the TESI had presented to you and accepting
7 Mr. Ellerbee's Order instead. And so, and, it was clearly
8 not a Ruling by the commission that was on appeal to this
9 Court. So, with those things it's clear to us that the
10 holding of the commission, the ultimate fair operating
11 margin that the company should have an opportunity to earn
12 is 20 percent. It is not subject to this appeal. And
13 that you didn't intend to reverse that Ruling of the
14 commission. In remanding this case back to the
15 commission. What instead--

16 THE COURT: -- My recollection is that, I don't know
17 what ultimate means. My recollection is when I've heard
18 these arguments, somebody seeking a rate how I can do it
19 on an annual basis and it is generally set on an annual
20 basis and if they ultimately determine that they ought to
21 earn 10 million-dollars but it's going to take them 20
22 years to earn it, that I don't believe it is in the
23 province of what they're entitled to do. They can set a
24 rate. They're entitled to 20 percent per one year then
25 let them do it.

1 MR. BEACH: Judge, the argument was this, we said
2 that the commission had one finding of a fair and
3 reasonable operating margin and that was 20 percent.

4 THE COURT: And it was going to be faced if--

5 MR. BEACH: -- Right. They argued at that time and
6 ultimately it was crucial to their argument and they said
7 the commission didn't find you are entitled to 20 percent.
8 What they found is, what you are ultimately entitled to
9 20 percent and that was based on the revenue that the
10 commission decided that this company needs to be able to
11 earn for it to be fine. Now, as I understand it, the
12 Court, what you did, Your Honor, was that you remanded
13 this case back to the commission. You didn't reverse or
14 try to invade the commission's province on what was or not
15 a province on what wasn't fair and reasonable that wasn't
16 before the Court.

17 It wasn't an issue on appeal. Instead what you said
18 was that the commission has an obligation to set a single
19 operating margin and a single rate. Based on statutes.
20 The commission did do this in this case and consequently
21 you are remanding the case back to the commission to set a
22 single rate and a single operating margin. Now, that,
23 Your Honor, is quite, I mean it's certainly, it leaves the
24 issue open for what operating margin the commission has to
25 implement. We believe the commission has to implement a

1 20 percent operating margin. Mr. Ellerbee believes that
2 the commission should implement a lower rating margin.

3 THE COURT: Well, look I believe that the commission
4 can implement whatever margin they want to implement. It
5 can be 20, 80 percent, or 6 percent. I'm not telling them
6 what they need to do. I am saying they can't say
7 6 percent this year, 14 percent next year, and 20 percent
8 the year after that.

9 MR. BEACH: And Your Honor, that's all we want is an
10 Order that clarifies that.

11 THE COURT: Well, I don't understand why that, seems
12 to me it says that. Does that not say that Mr. Ellerbee?

13 MR. ELLERBEE: Your Honor, I think it does say that
14 and the issue, what Mr. Beach argued in his initial appeal
15 was that the commission had to and he I think Mr. Beach
16 asked you to Order as a matter of law a 20 percent
17 operating margin immediately. That was his appeal. And
18 you said no because the commission made a mistake in
19 setting three different sets of rates and three operating
20 margins. I need to remand it back with instructions to
21 the commission you can't do it that way. You need to set
22 one operating margin. I'm not going to tell you what to
23 do. And I think that's what this Order does, Your Honor.

24 THE COURT: That's what I thought it did too. Tell
25 me where it doesn't do that, Mr. Beach.

1 MR. BEACH: Judge, the sentence right here the next
2 to last sentence on paragraph above conclusion on TESI
3 with TESI that the phased in approach was there but
4 disagrees with TESI's argument that it is entitled to
5 rates which would produce an operating margin of 20
6 percent. I believe and I think that Mr. Ellerbee's
7 client's are going to urge him to try and characterize
8 that as saying the flip side of that, which is that we --
9 the Court believes that TESI is not entitled.

10 THE COURT: You are aware the Court makes no finding
11 as to what the appropriate rate would be?

12 MR. BEACH: The Court makes -- the Court -- Here's
13 what I think we need--

14 THE COURT: -- Why don't we just amend it to say
15 that, Mr. Ellerbee? You have a problem with it?

16 MR. ELLERBEE: Your Honor, I don't have a problem
17 with that. And another way to do it would be--

18 THE COURT: I'm not telling them that they can't do
19 20 percent. You know, I would think that Mr. Ellerbee is
20 trying to earn his fee. He would be over one percent or
21 no percent.

22 MR. BEACH: I expect he will be, Your Honor. Given
23 the Order's words, think it would be appropriate to issue
24 a clarifying Order stating at that time the Court is not
25 reviewing or reversing the commission's findings and

1 conclusions.

2 THE COURT: Who drew this Order?

3 MR. ELLERBEE: I did, Your Honor.

4 THE COURT: Add a sentence after that sentence this
5 Court is making no finding as to what the appropriate rate
6 should be.

7 MR. ELLERBEE: Operating margin should be, Your
8 Honor.

9 THE COURT: I'll make a note in the finding in that
10 regard.

11 MR. BEACH: Judge, let me just say that the details
12 are going make a huge difference. I'd like to show a
13 reason why they will, if I may approach the bench.

14 THE COURT: You certainly may.

15 MR. BEACH:
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The issue of operating margin is crucially important.

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And I think, Your Honor, and here's what we would ask

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because of this, we would ask at that time the Judge's

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Order say we are not reviewing or addressing the

11

commission's findings with regard to the operating margin.

12

I believe that that is in fact the case you are not

13

reviewing or reversing the finding.

14

THE COURT: What is it they just said that the Court

15

makes no finding as to?

16

MR. BEACH: Well, you could, you could say we are

17

reversing the commission's findings on 20 percent, which I

18

think, I think what Mr. Ellerbee will argue is that you

19

have reverse the commission's finding on 20 percent and

20

you left it open to the commission.

21

THE COURT: If he does he would be one, in error and

22

two, intellectually dishonest to do that. I mean, I just

23

said and Mr. Ellerbee agrees I made no finding with

24

respect to the operating margin.

25

MR. BEACH: Your Honor, if it said I have made no

1 finding with regard to the commission's Ruling on the
2 operating margin, I would be satisfied with that. But I
3 think it's a difference.

4 THE COURT: I don't -- we're being hypertechnical
5 here.

6 MR. ELLERBEE: Your Honor, I think I may have figured
7 it out. I don't know whether he will address this or not.
8 But you suspect what he wants us to do when this case is
9 remanded to the commission, is to argue to the commission
10 that they have no choice but to adopt a 20 percent
11 operating margin. That's the only way that this arguments
12 that he's now making makes any sense is he's trying to
13 keep himself, keep available to him the argument that they
14 have no choice but to set.

15 THE COURT: That--

16 MR. BEACH: Your Honor, I am going to make that
17 argument.

18 THE COURT: Well, that's not true. I'm not making a
19 finding as to that. They have to determine what is the
20 proper operating margin for the one year period. I made
21 no finding as to that. I did find that their approximate
22 method of trying to get 20 percent or a three year
23 increment is improper.

24 MR. BEACH: Well, and just so His Honor knows, it's
25 rates are not set for one year periods. They are set

1 forever.

2 THE COURT: I understand that. But they are set on a
3 one year basis. I mean, they're not set five the first
4 year, ten the next year, 15 the year after, 20 the year
5 after, 25 the year after, 30 the year after, 35 the year
6 after.

7 MR. BEACH: That is correct.

8 THE COURT: They are set for a one year period and
9 somebody has a right to come in and attempt to change it.
10 Which they did not changed they continue on that rate.

11 MR. BEACH: I don't mean to argue with the Court,
12 Your Honor, they're set forever with the fact that the
13 utility has a right any time after one year to come in and
14 ask for a change.

15 THE COURT: Isn't that what I just said?

16 MR. BEACH: Well, you said they were set for a one
17 year period and that's not entirely correct, Your Honor.

18 THE COURT: Unless someone comes in to change it and
19 they seek to change it and their changes made it's there
20 until an alternate occurs.

21 MR. BEACH: That is correct. And Judge, I'm not
22 going to make any mystery to this.

23 THE COURT: I'm agreeable to change this to the
24 extent that the Court makes no findings with respect to
25 proper operating margin. If that doesn't, that's not

1 sufficient for you, we'll leave it as it is.

2 MR. BEACH: All right. Your Honor, I think that it
3 is an improvement, Your Honor.

4 THE COURT: Mr. Ellerbee, would you add that sentence
5 to it and just do this thing as an amended Ruling on
6 appeal to the public service? Add the word, amended and
7 add that sentence and that will be the extent of what I'm
8 going to do. You can go argue that the Judge says that
9 20 percent is they can't go below that which is not what I
10 said. Mr. Ellerbee can go argue they have got to find
11 something less than 20 percent, which is not what I said.
12 Get a copy of the transcript.

13 MR. BEACH: Right. And Your Honor, I promise you, I
14 was not reading to--

15 THE COURT: -- You can read it to whomever you want
16 to read it but I'm making no finding as to--

17 MR. BEACH: I wasn't going to make that argument,
18 Your Honor. It was based on the commission's previous
19 Ruling.

20 THE COURT: All right.

21 MR. ELLERBEE: I will hand it over to you in the
22 morning.

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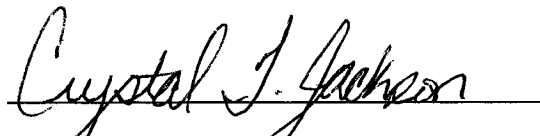
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, Crystal T. Jackson, Official Court Reporter for
the fifth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the Court of Commom Pleas for
Richland County, South Carolina, on the 24th day of
October, 2005.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 13, 2006


Crystal T. Jackson, Court Reporter